



MEETING	Council
DATE	4 June 2009
TITLE	Veterinary Legislation Group report
CLASSIFICATION	Unclassified
SUMMARY	The paper presents the report of the Veterinary Legislation Group and summarises comments made in Committee discussions
DECISIONS REQUIRED	To consider the recommendations of the report
ATTACHMENTS	Annex A: summary and recommendations Annex B: report
AUTHOR	Professor Stuart Reid Chairman of Veterinary Legislation Group dean@vet.gla.ac.uk

Introduction

1. The report of the Veterinary Legislation Group is at annex B. Annex A summarises the report and, in paragraphs 5 and 6, lists the recommendations.
2. The report has been discussed by the Veterinary Nurses Council and the Education Policy and Specialisation Committee, Public Affairs Committee and Planning and Resources Committee. The detailed comments made are recorded in the minutes of the meetings. The report has also been circulated electronically to the Advisory, Preliminary Investigation and Disciplinary Committees. The main messages are summarised below.

Committee discussions

3. The Committees discussed the three priorities identified in the report:
 - (a) new disciplinary machinery for veterinary surgeons;
 - (b) a wider disciplinary jurisdiction and more flexible disciplinary powers;
 - (c) a new composition for the RCVS Council.
4. There is general support for the view that RCVS should pursue the reform of disciplinary machinery: item (a) above. There is also general support for the view that Council should formally withdraw the complex package of proposals which it endorsed in 2005, in order to avoid confusion about the College's position. There is less support for pursuing items (b) and (c).

Means of bringing about change

5. The report advises that there is no way in which RCVS can itself realistically bring about the recommended changes in the Veterinary Surgeons Act. A Private Member's Bill would not be a suitable way forward. It is the responsibility of the Government to keep the legislation up to date, and the College should call upon it to do so. The legislative mechanism or mechanisms would be for Ministers to choose. DEFRA could implement items (a) and (c) through a regulatory reform order, which would entail Parliamentary proceedings but would be less onerous than main legislation. Item (b) would need a Government Bill.

Recommended action

6. Subject to Council's views, the report recommends that the next step should be to launch further consultations, still firmly with a view on what society might expect of a professional body and cognisant of changes that have occurred in the governance of the health professions. Discussions with the British Veterinary Association will be particularly important. The College and the Association have different remits, but it is sensible to identify common ground.

Comments

7. Focussing on item (a), the reform of the disciplinary machinery, is an easy option. An independent Disciplinary Committee should be welcomed both by the public at large and by the veterinary profession.

8. A decision not to pursue item (b), the updating of the disciplinary jurisdiction and powers, would expose the College to criticism. The evidence which DEFRA submitted to the EFRA Select Committee for its inquiry into the Act said that the current disciplinary arrangements do not "meet the public need for the investigation and resolution of complaints that directly relate to the competence and care of service provided by veterinary surgeons". Both DEFRA and the Committee complained that too many of the complaints which the College receives about veterinary surgeons are rejected as being outside the disciplinary jurisdiction. Part of the RCVS response was to point out that the proposals adopted by Council in 2005 included a broadening of the jurisdiction to embrace all aspects of fitness to practise, including health and professional performance. Item (b) would bring the Veterinary Surgeons Act squarely into line with the legislation of the regulators of the human health professions. It would not give RCVS jurisdiction to award damages for negligence: the College's role would, as now, be to seek to ensure that veterinary surgeons are fit to practise, not to offer redress to complainants.
9. A fresh look at the composition of Council (item c) would be appropriate if the disciplinary machinery were reformed, because Council members would no longer serve on the Disciplinary Committee. It would also make it possible to rectify the existing anomaly that Council, which regulates veterinary nurses under Charter powers, does not include a veterinary nurse as one of its members.
10. A final comment. The updating of the Veterinary Surgeons Act raises complex and controversial issues, and the Group's report covers a lot of detail. The issue for Council to consider, however, is what public posture the College should adopt. The Group hopes that Council will call on the Government to bring the Veterinary Surgeons Act up to date so as to equip the College with the tools which it needs as a modern professional regulator in order to protect animal welfare and the public interest.

VETERINARY LEGISLATION GROUP: REPORT TO COUNCIL

SUMMARY AND RECOMMENDATIONS

1. Last year we were commissioned to advise how RCVS should proceed following the announcement by the Department for Environment, Food and Rural Affairs (DEFRA) that it did not plan to pursue changes in the Veterinary Surgeons Act 1966 for the time being.
2. We are convinced that the legislation needs to be brought up to date, in order to enable the College to do its job as statutory regulator of the veterinary profession in a way that measures up to present-day expectations. RCVS has a public duty to press for the changes which are needed. We have identified the following as the most urgent priorities:
 - new disciplinary machinery for veterinary surgeons;
 - a wider disciplinary jurisdiction and more flexible disciplinary powers; and
 - a new composition for the RCVS Council.
3. There is no direct way for RCVS to secure the necessary amendments to the legislation. Some of the changes needed could be brought about through a regulatory reform order, but DEFRA would have to be persuaded to prepare this and put it through Parliament. In principle another possibility would be for the College to persuade a Member of Parliament to introduce a Private Member's Bill, but we do not recommend this. It would make heavy demands on the College's resources, the prospects of success without Government support would be poor, and a Bill could be amended during its passage through Parliament in unwelcome ways. The College would have no control over the outcome.
4. Because the way ahead is uncertain, it is all the more important for Council to be clear what it wants. The Government is responsible for keeping the veterinary legislation up to date, and the College should be seen to urge Ministers to do so. RCVS needs to adopt a position which can be communicated to the Government, Parliamentarians, the profession, the press and the public at large. The proposals which Council adopted in November 2005 were complex and may no longer reflect its views. We therefore invite Council to endorse a streamlined set of proposals, designed to address the main priorities which we have identified, as a basis for discussion with DEFRA and consultation with the profession.
5. The changes in the legislation which we recommend are as follows:
 - a. the Act should provide for PIC and DC to be constituted in accordance with rules made by Council. The rules should be subject to approval by the Privy Council or the Secretary of State, and the legislation should stipulate that DC should not include members of the RCVS Council (paragraph 32 of report);

- b. the disciplinary jurisdiction should encompass professional conduct, clinical performance, health, and criminal convictions relevant to fitness to practise (para. 35);
- c. PIC should have power to dispose of a complaint by giving a caution, with the respondent's agreement, or advice (para. 38);
- d. following disciplinary proceedings DC should have power to give a warning as to future conduct or impose conditions or restrictions on future practice by the respondent, in addition to the present powers to remove or suspend from the register (para. 38);
- e. between 30% and 50% of the members of the RCVS Council should be non-veterinarians (para. 45);
- f. at least half of the veterinary members of Council should be elected (para. 46);
- g. Council should include a veterinary nurse as an appointed member (para. 47);
- h. there should be one Council member nominated jointly by the UK universities with recognised veterinary degrees (para. 48);
- i. the power to appoint Council members other than elected members and the member to be nominated jointly by the universities should rest with the Government of the day, whether the Secretary of State or the Privy Council (para. 49);
- j. Council should have no more than 30 members (para. 50).

6. We recommend the following actions (paragraphs 64, 67, 68):

- Council should formally withdraw the package of proposals which it adopted in 2005;
- there should be consultations with the veterinary and veterinary nursing professions, interested bodies and the public at large on the basis of Council's provisional views. In parallel with the public consultations, RCVS should enter into discussions with DEFRA, BVA, BVNA and the universities;
- Council should confirm or modify its position in the light of the outcome of the consultations and discussions;
- RCVS should translate the proposals approved by Council into a detailed specification of the changes to be made in the Act;
- the College should explore the feasibility of setting up independent, non-statutory arrangements to help resolve disputes between veterinary surgeons or veterinary practices and their clients; and
- further consideration should be given to the updating of the Charter.

REPORT OF THE VETERINARY LEGISLATION GROUP

A: INTRODUCTION

Terms of reference

1. The terms of reference set for us by the Officers were:
 - "To prepare advice for Committees and Council on how the College might pursue changes in the veterinary legislation in the absence of a place in the Government's legislative programme, and in particular:
 - a. to review the current RCVS proposals, as approved by Council in November 2005, taking account of relevant developments since then in the regulation of the human health professions;
 - b. to consider other ways of achieving the proposals;
 - c. to advise on priorities;
 - d. to advise on different ways of making progress without a Government Bill, including possible changes to the RCVS Charter;
 - e. to consider the updating of the Charter; and
 - f. to advise on means of consulting the profession and veterinary organisations as appropriate.
 - The Group should put an interim report to Committees in October 2008 and a full report in February 2009. It should specifically take into account the EFRA Select Committee Report and DEFRA's response."
2. Appendix A lists the members of the Group and declares their interests. Appendix B sets out the recommendations in the EFRA Select Committee's report of 14 May 2008 on the Veterinary Surgeons Act 1966 and the DEFRA responses to the recommendations.

Why is change needed?

3. Our terms of reference require us to advise how RCVS can pursue changes in the veterinary legislation. Before doing so we think it is worth recalling why such changes are needed. In 2005 Council decided that the College should actively seek new legislation. At that time the Government was expected to be willing to devote resources to making this happen, but now we know that there is no immediate prospect of a Government Bill. This makes it all the more important to be clear why RCVS should press for the Veterinary Surgeons Act to be brought up to date.
4. The 1966 Act was largely a consolidation of earlier legislation. Until it came into force the College was still operating under the Veterinary Surgeons Act 1881 as amended by the Veterinary Surgeons Act 1948. Before 1881 RCVS was already the gatekeeper of the

veterinary profession: the College examined veterinary students, awarded the diploma of membership and kept the register of members under the Royal Charter of 1844. The main change made by the 1881 Act was to establish the professional conduct jurisdiction of the College. The work of the College changed when the 1948 Act provided for UK graduates to be registered on the basis of their recognised degrees rather than taking the College's examination, but the regulatory model remained essentially Victorian. It has worked well, but it does not measure up to modern expectations in some respects. There are three main problems.

5. One is that the Act provides for professional self-regulation in the traditional sense. There is no requirement for lay membership of Council: the four Government appointees, and one of the nominees of each of the UK veterinary schools, can be lay members, but there is nothing to stop them all being veterinary surgeons. Elected veterinary surgeons form the largest category of Council members. With 40 members currently, and 42 in prospect when the Nottingham veterinary school achieves full recognition, Council is large by modern standards. The Preliminary Investigation and Disciplinary Committees (PIC and DC) have to be composed entirely of Council members. Of course the College does all it can, within the constraints of the legislation, to ensure propriety, to involve lay members in the disciplinary process and to invite external scrutiny (through the appointment of lay observers to PIC). Nevertheless, outside observers can get the impression that veterinary surgeons are guided and, where necessary, judged by other veterinary surgeons. These days, it is not enough for a body exercising public functions to make sure that it is behaving correctly and pursuing the public interest: it has to demonstrate this to the world at large, by making transparent arrangements to ensure objectivity and propriety.
6. The second, related, problem is that Council, which ultimately sets the framework of guidance within which veterinary surgeons in the UK operate, supplies the members of the committees which consider allegations against individual practitioners. Members of Parliament, who are involved in making laws, do not decide who should be prosecuted for breaking them or sit in judgment when cases go to court. That would not be fair on the accused, because those who have been involved in making legislation will have their own views on what it means. The prosecution and the courts must have regard to what the law says, not what individual legislators may have meant it to say. Again, the College goes to great lengths to ensure that members of PIC and DC approach cases with an open mind. The fact remains, however, that the Veterinary Surgeons Act requires them to be members of Council, and in that capacity they will be party to policy debates. Council members will, for example, be aware of the discussions which have taken place over the years on the requirements for 24 hour emergency cover. Those who serve on PIC or DC may have to deal with cases in which a veterinary surgeon is said to have failed to provide such cover, and even if they have not taken an active part in relevant Council debates they will be acquainted with the issues. The question is not whether our disciplinary machinery will pass muster under the Human Rights Act but whether it is fair to respondents. There could be a perception of bias and a risk of legal challenge.
7. We may think it is obvious that RCVS is there to safeguard animal welfare and the public good, not the interests of the veterinary profession, and that we take steps to ensure the integrity and fairness of the disciplinary process. Unfortunately others are unconvinced. Last year's report from the EFRA Committee said:

"From the submissions received by us, there appeared to be widespread dissatisfaction with the current disciplinary procedures, particularly as, under the

provisions of the Act, the members of the PIC and DC must be drawn from the RCVS Council. Most submissions agreed that the reputation of the profession was at stake and that change was necessary to bring the regulation of veterinary surgeons in line with changes made in the human health profession. One submission argued that complaints investigation ought to be taken away from the RCVS altogether. Others considered that the system had produced inconsistent judgments and sentencing, and questioned whether the process was compliant with the Human Rights Act."

8. The report went on to quote complaints from DEFRA that the current system is inflexible, lacking transparency and insufficiently customer focussed. We may think the criticisms levelled at us are ill-informed and unfair, but it is hard to rebut them convincingly so long as the Act makes Council the embodiment of the veterinary profession and requires PIC and DC to be made up entirely of Council members.
9. The third major deficiency in the legislative framework is that the regulatory powers available to RCVS are crude and limited. A veterinary surgeon, once registered, can practise for life subject only to paying retention fees, unless removed or suspended from the register following disciplinary proceedings. There is no power to require members to keep up to date. The grounds for removal from the register are still substantially as laid down in the 1881 Act, namely criminal convictions and disgraceful professional conduct - not a word about professional competence. The sanctions available are limited to removal (as in the 1881 Act) and suspension (introduced in 1948). There is no power to allow the respondent in disciplinary proceedings to continue to practise subject to conditions: in order to achieve that effect DC has to go through the manoeuvre of deferring judgment in return for the respondent agreeing to abide by conditions. A modern professional regulator needs modern tools with which to do the job.
10. The Veterinary Surgeons Act 1966, which lays down how RCVS is to do the job of regulating veterinary surgeons, is Government legislation, and the Government has a responsibility to keep it up to date as necessary. It does not follow, however, that the College should do nothing. RCVS is not a private club: we exercise statutory powers in the public interest. If the legislation within which we operate is no longer fit for purpose it is our duty to say so, and to do whatever we can to get it put right.
11. We have in fact concluded that there is very little scope for bringing about even limited improvements in the legislation without Government help. That, however, makes it all the more important to identify which changes are most urgently needed, to enlist the support of the profession so far as possible, and to formulate clear and precise proposals. When an opportunity for legislation arises we need to be ready with a fully worked-up package, and if we are vague about what needs to be done it will not happen. We therefore hope that Council will authorise public consultations and further detailed preparatory work.

B: BACKGROUND

History

12. In November 2005, following two consultations, Council adopted proposals for bringing the Veterinary Surgeons Act up to date. The changes in the legislation would have provided for:

- a reconstituted RCVS Council with a continuing responsibility to keep the register of veterinary surgeons, supervise veterinary education in the UK and set standards for veterinary surgeons;
- an autonomous Veterinary Nurses Council discharging the same functions in respect of veterinary nurses, who would be recognised as a profession;
- a new body, provisionally labelled "the board", to monitor compliance with standards set by the Councils, deal with complaints and take over the functions of the Preliminary Investigation Committee;
- an independent Conduct and Competence Committee to replace the Disciplinary Committee, with a jurisdiction widened to cover all aspects of fitness to practise and with a more flexible range of sanctions;
- licensing of practitioners, with mandatory CPD and power to introduce revalidation in due course;
- statutory regulation of the delivery of veterinary services, with standards for practices set jointly by the RCVS and Veterinary Nurses Councils and enforced by the board.

13. Discussions with DEFRA during 2006 indicated general sympathy for the aim of updating the Act but no commitment to introducing Government legislation. In giving evidence to the EFRA Select Committee in March 2008 for its inquiry into the need to update the veterinary legislation Lord Rooker said that recent decisions on the Department's budget and a review of its priorities meant that it would not in fact devote resources to this subject before 2011.

Prospects for Government legislation

14. The message which Lord Rooker delivered to the Select Committee implied that a Government Bill was unlikely to be introduced before the 2012/13 Session of Parliament, because DEFRA would first have to bid for a place in the legislative programme. In fact there is no guarantee that Government legislation will be introduced at any particular time. DEFRA Ministers will first have to be persuaded that the revision of the veterinary legislation merits a place in their departmental priorities.
15. In recent years the Government has devoted major resources to changing the regulatory arrangements for the human health professions. In 2007, following the Shipman case and other medical scandals, the White Paper, "Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century" announced Ministerial decisions, notably that:
- the councils of the human health regulatory bodies should have at least 50% lay membership;
 - the members of the councils should all be appointed rather than elected;
 - the councils should be small and focus on strategy rather than operations;

- where fitness to practise is called into question there should be separate arrangements for investigation, prosecution and adjudication, with cases being adjudicated by a body which is independent of the regulator; and
 - all health professionals should become subject to periodic revalidation to demonstrate that they are up to date and fit to practise.
16. It might be thought that the Government would wish to keep the regulatory arrangements of veterinary surgeons and veterinary nurses in line with the human health model, but DEFRA do not seem to think that necessary. Ministers perhaps do not see the updating of the Veterinary Surgeons Act as a high priority in the absence of any veterinary equivalent of the Shipman case. A bid for legislative time would, moreover, have to compete with other bids from within DEFRA and from other Departments and might not be successful. If a Government Bill were introduced to rewrite the Veterinary Surgeons Act it would be unlikely to have a smooth passage - various interest groups could be expected to lobby for amendments to promote their particular causes - and it is not obvious what compensatory political advantage Ministers would stand to gain.
17. A further obstacle to the early introduction of a Government Bill is that DEFRA would have to decide what its content should be. The Department's response to the Select Committee's recommendations indicates a wish to introduce new regulatory arrangements for providers of veterinary services other than veterinary surgeons and veterinary nurses. This is described - surprisingly - as "a central issue when considering replacement of the Veterinary Surgeons Act". The response goes on, however, to say that the Department does not expect to be able to develop its ideas on this subject during the current spending round, and informal discussions with DEFRA officials have not elicited any indication of what they may have in mind. There is no obvious quick fix, and in view of the existing powers in the Act it is not clear that one is needed. If, however, the Department sees a need for a new approach to the regulation of non-veterinarians it will have to launch a review of the policy and in due course publish a consultation paper. Judging by past experience this process will take years rather than months, and it cannot start until resources have been found for the purpose.
18. Against this background we take the view that Council should work on the assumption that a Government Bill will not be introduced in the foreseeable future. It will nevertheless be important to continue to engage with the Department.

Possible ways of securing change without a Government Bill

19. In principle there are other ways in which the College may be able to pursue the changes it seeks, notably:
- voluntary measures;
 - amendments to the Charter (which would require the agreement of Ministers but not the active participation of the Department);
 - persuading DEFRA to make a regulatory reform order;
 - a Private Member's bill.
20. The last two mechanisms call for some comment.

21. The Legislative and Regulatory Reform Act 2006 gives Ministers power to make orders designed to remove or reduce burdens imposed by legislation or to ensure that regulatory activities are carried out in a transparent, accountable, proportionate and consistent fashion and targeted only at cases in which action is needed. A regulatory reform order may transfer or provide for the delegation of a regulatory function and amend the constitution of a statutory regulator. An order would have to be made by DEFRA Ministers, following public consultation, and would entail Parliamentary procedure. The process would be less onerous than a Government Bill, but would still make demands on DEFRA's resources.
22. A Private Member's Bill is draft legislation introduced by an MP or a member of the House of Lords who is not a member of the Government. Such a Bill is unlikely to become law unless it is short, simple, uncontroversial and acceptable to the Government. The prospects of success are greatly improved if the Bill is promoted by an MP who has secured a high place in the ballot held at the beginning of each Parliamentary session and as a result has a claim on the limited Parliamentary time made available for Private Members' legislation. If the College wished to go down this route it would be necessary to consult on proposals (in order to demonstrate general support), get a Bill drafted (at significant cost) and seek to persuade an MP who was successful in the ballot to take it up. There would be no realistic prospect of going through those steps between the June Council meeting and the next ballot, which would normally take place in November. In the longer term a Private Member's Bill remains a possibility, but it would only be a suitable vehicle for carefully selected amendments to the VSA.
23. A Private Member's Bill is sometimes promoted in order to draw attention to an issue, with no serious expectation that it will become law. It would be open to RCVS to invite a sympathetic MP to promote a Bill in order to advertise the need for new veterinary legislation. We do not, however, recommend promoting a Private Member's Bill in the hope of actually securing the necessary changes, for the following reasons:
 - if a Bill were introduced, the College would have to provide full back-up to the sponsor MP and this would be a heavy burden;
 - the Bill would be unlikely to make progress without the positive support of DEFRA, and even then could easily be blocked by an MP with a particular axe to grind; and
 - there would be a danger of a Bill being hijacked, with unwelcome amendments being carried. The College would not be in control.

The need to set priorities

24. The package approved by Council in 2005 would entail extensive amendments to the Act, some of them controversial. If Ministers decide in due course to introduce a Government Bill in order to bring the Act up to date it will be necessary to identify the most urgent priorities. The competition for space in the Government's legislative programme is fierce, and a proposed Bill has a better chance of finding a place in the programme if it is short, simple and confined to politically attractive content. DEFRA Ministers are unlikely to be interested in bidding for legislative time for a long, detailed Bill designed to give the Veterinary Surgeons Act a thorough spring-clean. The College's proposals therefore need to be straightforward, focussed and easy to sell. The

package which Council adopted in 2005 was logical, but it was complicated and hard to explain.

C: REVIEW OF THE RCVS PROPOSALS

Guiding principles

25. In looking again at the proposals which Council adopted in 2005 we have had regard to the following principles:
 - the purpose of the legislation is to protect animal welfare and the public interest by ensuring that veterinary surgeons are properly qualified and fit to practise;
 - the role of RCVS as the statutory regulator is to protect the public interest, not to represent the interests of the veterinary profession;
 - the work of regulation benefits from the involvement of veterinary professionals (both veterinary surgeons and veterinary nurses) and people who are not registrants;
 - the arrangements for regulation should be transparent, so that the public can be satisfied that decisions are made for the right reasons.
26. Similar considerations lie behind the comprehensive rewriting of the regulatory arrangements of the human health professions which has taken place in recent years and is still in progress. The proposals which Council adopted in 2005 followed very similar lines to the changes in the legislation for the medical and other health professions.
27. The College ought not in our view to restrict itself to putting forward proposals which BVA can be expected to endorse. The two bodies have different remits. Of course it is sensible to seek consensus so far as possible, but the College must put the public interest first.

Priorities

28. In addressing priorities we have had regard not only to the urgency of the different candidates for attention but also to the feasibility of achieving them in the relatively short term. We have identified the following priorities which are discussed below:
 - new disciplinary machinery for veterinary surgeons;
 - a wider disciplinary jurisdiction and more flexible disciplinary powers; and
 - a new composition for the RCVS Council.
29. Our report also discusses whether RCVS should seek power to offer some kind of redress to those who make complaints against veterinary surgeons. This was not part of the proposals adopted by Council in 2005, but DEFRA and the EFRA Select Committee have both expressed concerns in this area. We go on to offer some thoughts on the regulation of providers of veterinary services other than veterinary surgeons and veterinary nurses, in view of the importance which DEFRA attaches to this subject.

30. Our priority list does not include the regulation of veterinary nurses. There is general agreement that veterinary nursing should be formally recognised as a profession, with nurses being subject to statutory regulation on the same lines as veterinary surgeons, and achieving this should in our view remain one of the firm objectives of the College. Substantial legislation will, however, be needed for that purpose (in both the Westminster and the Scottish Parliaments), and it will not be possible to proceed by way of a regulatory reform order. It is clear Government policy, moreover, that a new group will only be recognised as a profession, with statutory regulation, when voluntary arrangements are well-established. In view of this we would have recommended that the College should so far as possible provide a comparable regulatory framework using its powers in the Royal Charter, but that has already been done with effect from September 2007. Registered Veterinary Nurses accept an obligation to undertake CPD, and following a transitional period their professional conduct will be subject to supervision. The operation of the Register will achieve some of the objects of statutory regulation and prepare the ground for legislation in due course.

Disciplinary machinery

31. The consultation paper which the College published in February 2003 suggested that Council members should be in a minority on DC, or perhaps not be members of it at all. By 2005 the College had come to the firm view that adjudication should be detached from rule-setting, and under the proposals adopted by Council in that year the desired separation of functions would have been achieved by setting up new institutions: the "board" to investigate complaints and the independent Conduct and Competence Committee to take on the function of adjudication. The new bodies would have dealt with complaints against veterinary surgeons and veterinary nurses alike. Now that there is no immediate prospect of statutory regulation for veterinary nurses it makes sense to proceed by way of amending the constitutions of the existing PIC and DC.
32. Currently the composition of those Committees is specified in the Act. By contrast, the governing Councils of the human health regulators generally have discretion to determine the constitution of their corresponding committees. We **recommend** that the Veterinary Surgeons Act should be amended to provide for PIC and DC to be constituted in accordance with rules made by Council. To safeguard the public interest the rules should be subject to approval by the Privy Council or the Secretary of State. The legislation should stipulate that DC should not include members of the RCVS Council, but otherwise it should be silent about how the members of the Committees should be chosen. Views on this subject are bound to develop as time goes by, so flexibility will be needed.
33. This proposal should not be controversial. The mechanics would be for DEFRA to consider, but the necessary amendment to the Act could be secured through a regulatory reform order.

Disciplinary jurisdiction and powers

34. The proposals adopted by Council in 2005 included a number of changes to the professional conduct powers and jurisdiction. We would give equal top priority to two areas: a wider disciplinary jurisdiction, and more flexible disposal powers for DC.
35. Looking first at the disciplinary jurisdiction, the current legislation reflects the 19th century notion that membership of a profession is a privilege which can only be taken

away by reason of conduct unbecoming. The only grounds on which veterinary surgeons can be removed from the register (apart from failing to pay fees, or fraudulent registration) are criminal convictions rendering them unfit to practise, and disgraceful conduct. Deficient professional skills, which may be the result of declining powers or a failure to keep up to date, or health problems which may make practitioners a menace to their patients, are not in themselves grounds for removal from the register. This is clearly wrong: the inclusion of a veterinary surgeon's name in the register ought to carry an assurance of professional competence as well as good behaviour. One of the complaints levelled against RCVS, and picked up by the EFRA Select Committee, concerns the high proportion of complaints against veterinary surgeons which are not referred to PIC because they allege poor clinical performance rather than misconduct. The legislation of the human health professions provides in fairly standard terms for the regulatory bodies to have jurisdiction over fitness to practise, defined as covering professional conduct, clinical performance, health, and criminal convictions relevant to fitness to practise. We **recommend** that the veterinary legislation should follow suit.

36. More flexible disposal powers for DC would complement a wider jurisdiction. If disciplinary proceedings relate purely to conduct, loss of the right to practise (whether permanently or for a while) may be a sufficient sanction. If, however, the object is to ensure that registered veterinary surgeons are fit to practise in every respect, a finding of impaired fitness to practise ought to lead to appropriate remedial measures. A practitioner whose clinical skills are rusty but not beyond repair probably needs to be retrained, not removed from practice. DC therefore needs to be able to allow a veterinary surgeon to continue in practice subject to conditions, for example carrying out specified procedures only under supervision pending the completion of relevant CPD. Or, again, it may be appropriate to allow a veterinary surgeon with a relevant addiction to remain in practice subject to effective measures to keep the problem under control.
37. The proposals adopted in 2005 envisaged other disposal powers for use in borderline cases: by PIC, which should be able to dispose of a complaint following preliminary investigation by giving a caution, with the respondent's agreement, or advice; and by DC, which should have the option of giving a warning as to future conduct. It would certainly be good to have express powers in the legislation to dispose of cases in these ways, even if this amounted to little more than the formalisation of existing practice.
38. We therefore **recommend** that PIC should have power to dispose of a complaint by giving a caution, with the respondent's agreement, or advice, and DC should have power to give a warning as to future conduct or impose conditions or restrictions on future practice by the respondent, in addition to the present powers to remove or suspend from the register.
39. A wider jurisdiction for DC, defined in terms of fitness to practise, and more flexible disposal powers for PIC and DC, should in principle be generally welcomed. The new jurisdiction would, however, extend the grounds on which veterinary surgeons can be subject to disciplinary sanctions, so controversy could not be ruled out. The changes would not be suitable for a regulatory reform order. Such an order cannot be made if it prevents anyone "from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise". The central proposal - that DC should be able to impose sanctions in cases of impaired fitness to practise - would encroach on the existing legal entitlement of registered veterinary surgeons to continue to practise so long as they pay their fees, refrain from disgraceful professional conduct and avoid being convicted of relevant criminal offences. We conclude that the changes we

recommend in the disciplinary jurisdiction and disposal powers call for a Government Bill to put them into effect. This would be for DEFRA to decide should it seek to make the changes we recommend.

40. The 2005 package also proposed:
- powers to require persons other than the respondent to disclose information relevant to a preliminary investigation and to draw an adverse inference from a respondent's failure to answer reasonable requests for information;
 - power for DC to make an interim order pending proceedings, suspending the respondent or imposing conditions or restrictions on continued practice by the respondent; and
 - power to suspend or impose conditions or restrictions with immediate effect following proceedings, without waiting for rights of appeal to be exhausted.
41. With one exception, these powers are well precedented in the human health legislation. The exception is the proposed power to draw an adverse inference from silence when a complaint is under investigation. We would not pursue that. There is a good case to be made for the other powers, but we would not give priority to obtaining them. None would be of central importance for the work of RCVS as a regulator. The proposed powers to make interim orders and to give immediate effect to disciplinary sanctions would also be highly controversial, and rightly so: there are strong arguments both for and against. We would leave all these proposals to one side, in order not to complicate discussions with the veterinary profession and distract attention from the urgent priorities of widening the disciplinary jurisdiction and giving DC a proper range of disposal powers.

Composition of the RCVS Council

42. The RCVS consultation paper of February 2003 launched a debate on the composition of Council with the following observations:
- "The regulatory body of any self-governing profession has to combine two roles. Self-regulation means that it represents the profession's own values and standards and takes steps to ensure that individual members observe them. The regulatory body must also, however, act as the guardian of the wider public interest, whether or not this coincides with the immediate interests of individual members of the profession. In the case of RCVS this wider role means considering the interests of clients, patients, veterinary surgeons and the public at large.
- The Government has called for the self-regulatory bodies for the clinical professions in the human health field to be smaller, with much greater patient and public representation in their membership, to have faster, more transparent procedures, and to develop meaningful accountability to the public."
43. The 2007 White Paper referred to above said, in relation to the governing councils of the human health regulators:
- "The intention is to ensure that councils focus on strategic rather than operational issues with the aim of assuring excellence in delivery in the long

term. In order to do this, councils will need to be smaller to ensure effective strategic decision making and oversight of their executives, shifting away from the model of large representative bodies that seek to include all possible professional, clinical, trades union, lay, educational, employer and geographical interests. The Government believes that all the councils should move to a more consistent and smaller size that enables them to function more effectively as boards for their organisations, with a statutory duty to ensure that the interests of all stakeholders are considered in their deliberations."

44. Council needs to be constituted so that it can carry out effectively the task of providing strategic direction for the College and command the confidence of the public and the veterinary and veterinary nursing professions. There are a number of factors to consider.
45. First, what balance should be struck between veterinary and lay membership? The EFRA Committee recommended at least 40% lay membership, and DEFRA have taken the view that "lay membership of any Council should be significantly higher than it now stands in the RCVS Council but that there should remain a veterinary professional majority". We **recommend** that between 30% and 50% of the members of Council should be non-veterinarians.
46. Secondly, should Council include elected veterinary surgeons? The Government has decided that the governing bodies of the human health regulators should consist entirely of appointed members. This creates a problem of accountability for expenditure: the members of a regulated profession have to bear the costs of regulation and ought to have a voice in how their fees are spent. There is value in having appointed veterinary members, chosen with an eye to the particular contributions they could make as individuals, but we think there should be elected veterinary surgeons on Council as well. We **recommend** that at least half of the veterinary members of Council should be elected.
47. How should veterinary nurses be represented? The regulation of veterinary nurses represents one of the College's major areas of activity under the Charter, and it is anomalous that there is no veterinary nurse on Council. In due course, when the legislation recognises veterinary nurses as a profession, we hope that veterinary surgeons and veterinary nurses will agree to be regulated by a single Council with appropriate representation of both groups. In the meanwhile we **recommend** that the RCVS Council should include a veterinary nurse as an appointed member.
48. What is the appropriate representation of the universities? The current legislation entitles each UK university with a recognised veterinary degree to nominate two Council members. This seems disproportionate. We do see advantage in having the veterinary schools formally represented on Council and **recommend** that the UK universities with recognised veterinary degrees should jointly nominate one Council member. The main input from the universities ought, however, to be to the Education Policy and Specialisation Committee or any successor to that committee. We therefore envisage that the Heads of the Veterinary Schools would be co-opted to the relevant committee ex officio, with appropriate arrangements to deal with any conflicts of interest when the continued recognition of UK veterinary degrees is under consideration. Expertise in educational matters will also be a relevant consideration in the selection of appointed members of Council.
49. We **recommend** that the power to appoint Council members, other than elected members and the member to be nominated jointly by the universities, should rest with

the Government of the day (whether the Secretary of State or the Privy Council). Ministers might decide to make appointments on the advice of the Appointments Commission, which was originally set up to deal with National Health Service appointments but is taking on wider functions.

50. How many members Council should have is very much open to debate. It should be big enough for important decisions to be informed by the contributions of Council members representing a range of experience and points of view, but without becoming unwieldy. The need to supply Council members to serve on committees should not, we suggest, be a major factor: we have recommended above that DC should no longer include Council members, and it would be healthy for other committees to include a significant number of non-Council members. We **recommend** that Council should have not more than 30 members.
51. We do not recommend a specific formula for the composition of Council at this stage. We suggest rather that Council should consider whether it agrees with our views on the various issues discussed above - lay membership, the balance of elected and appointed veterinary membership, representation of veterinary nurses, university representation and overall size. Specific options for the make-up of Council can then be identified within the parameters set.
52. A regulatory reform order would be an appropriate way to modify the composition of Council, subject to one query: there is some doubt whether, technically, such an order could be used to reduce university representation on Council.

Priorities for the longer term

53. Focussing on the priorities identified above implies leaving to one side the other proposals adopted by Council in 2005, notably:
 - statutory regulation for veterinary nurses;
 - licensing for practice, which would provide the powers through which Council could make CPD mandatory and, in principle, introduce some form of revalidation;
 - mandatory regulation of practice standards.
54. RCVS is committed to achieving statutory regulation for veterinary nurses. As noted earlier, however, the College has already taken the right steps to prepare the ground using Charter powers.
55. The proposal that practitioners should need a licence, which would be made subject to compliance with CPD requirements, provoked surprisingly strong reactions from parts of the profession. Veterinary surgeons working in industry, for example, took it to imply that they would have to undertake clinical CPD of a kind which would be irrelevant to their jobs. Practising veterinary surgeons are in fact already under a professional obligation to engage in CPD. As for revalidation or some other form of positive periodic reaccreditation, there has never been any suggestion that this would be a practical proposition any time soon. In our view the main priority should be to widen the jurisdiction and disposal powers of DC, so that veterinary surgeons who fail to keep their skills up to date are subject to the possibility of disciplinary proceedings and can be required to take remedial action.

56. The statutory regulation of practice standards would be designed to offer protection for animal welfare and the public interest in ways that are not readily achieved through the regulation of individual practitioners. The proposals adopted in 2005 were not consistent with the Government's "better regulation" policies, and papers went to Council in November 2007 and March 2008 suggesting ways of achieving the desired results with a much lighter touch. Legislation for this purpose would still, however, represent a new statutory jurisdiction for the College. We do not think this should be pursued as a priority at a time when major deficiencies in the law governing the regulation of individual veterinary surgeons remain to be put right.

D: ISSUES RAISED BY DEFRA AND THE EFRA SELECT COMMITTEE

Handling of complaints

57. The changes we recommend in the disciplinary machinery, jurisdiction and powers would be calculated to strengthen public confidence in the integrity of the arrangements for supervising the fitness to practise of veterinary surgeons. DEFRA argue, however, that the College should go further and seek power to offer some form of redress to complainants. The Department's submission to the EFRA Committee included the following passage:

"We fully accept that complaints about conduct of individual veterinary surgeons which brings the profession into disrepute must be thoroughly investigated and appropriate disciplinary action taken. However, concentrating only on instances when a veterinary surgeon is guilty of 'disgraceful conduct' (whatever that is taken to mean) means that the Disciplinary Committee is limited to considering a small number of the most serious type of complaint. The overwhelming majority of complaints received by the RCVS are sifted out at some point during the process. Allowing such a large number of complaints each year to be dismissed in this way inevitably harms the reputation of the veterinary profession.

Animal owners place significant amount of trust in veterinary surgeons and rightly expect that their animals will receive appropriate care. Today's consumer takes a much greater interest in the decisions taken by veterinary surgeons and wants to know why decisions have been taken. They also expect to be closely consulted throughout the process.

It is inevitable that, in some cases, things will go wrong and owners who feel that their animals have suffered or perhaps died because, in their view, a veterinary surgeon, was at fault want somewhere to take their concerns. They see their case as a serious injustice and want recognition of mistakes made and an assurance that lessons will be learned. It is impractical for the RCVS to provide a detailed second opinion for every disputed case. However, a complaints system must enable the regulator to consider if there are grounds for concluding that a veterinary surgeon has not maintained adequate levels of professional expertise or standards. Therefore, as well as 'professional misconduct', the regulator should have powers to address 'unsatisfactory professional conduct', with appropriate remedies, which forms the basis of the vast majority of complaints received by the RCVS."

58. The Committee's report said:

"We agree wholeheartedly with the Department's assessment of the drawbacks of the present disciplinary system. It is not satisfactory for customers who have a genuine case for complaint about the professional standards of a vet to only have recourse to the civil law, without any appeal to a regulatory body."

59. It is not clear just how DEFRA and the Select Committee think the veterinary legislation might be amended so as to give a better deal to those who complain about veterinary surgeons. We have thought about this carefully but are firmly of the view that it is not part of the job of a professional regulator to offer redress to consumers. The Veterinary Surgeons Act does not set out to offer remedies to those who are aggrieved by the actions of a veterinary surgeon: they have the same protections under the general law as anyone else who is dissatisfied with the work of a provider of services. Those who believe that the clients of veterinary surgeons ought to be placed in a stronger legal position than the clients of other providers of professional services need to make the case for this, in terms which are consistent with the Government's better regulation policies.

60. The concerns expressed by the Department and the Committee would in fact be met, to a significant extent, by the revised jurisdiction which we recommend for DC. More than half of the complaints which RCVS currently rejects as being outside the disciplinary jurisdiction relate to alleged negligence, misdiagnosis or inadequate treatment. Not all such complaints would come within the ambit of DC, because clinical negligence would not of itself necessarily indicate impaired fitness to practise, but it would no longer be necessary to adduce evidence of disgraceful conduct in every case.

61. There is nothing to stop the veterinary profession setting up voluntary arrangements to help resolve disputes. Such schemes have been set up for the dental and optical professions and have been found to be beneficial, by encouraging the parties to communicate with each other and try to resolve their dispute. The RCVS Practice Standards Scheme requires tier 2 practices to have a written complaints policy and keep a record of complaints received and the responses made. We understand that these requirements may be strengthened as a result of the current review of the Scheme, and we would welcome this. In addition we recommend that the College should explore the feasibility of setting up independent arrangements to help resolve disputes between veterinary surgeons or veterinary practices and their clients.

Regulation of other providers of veterinary services

62. We noted earlier that the DEFRA response to the Select Committee's report saw a need for new regulatory arrangements for providers of veterinary services other than veterinary surgeons and veterinary nurses. RCVS is not responsible for devising regulatory arrangements for people other than veterinary surgeons and veterinary nurses, and if it presumed to do so its efforts might well be rejected by those concerned. There is, however, a danger that the Department will block any attempt to remedy the main deficiencies in the legislation if the regulation of other service providers is not addressed at the same time. We have therefore looked at this area, which raises complex issues. These are discussed in appendix C.

63. We suggest that Council should consider offering the following message to DEFRA:
- given the Department's publicly-aired concern about the regulation of "paraprofessionals" it would be helpful to know who the term is meant to refer to and what problems are perceived;
 - the existing provisions in the Veterinary Surgeons Act give Ministers ample power to permit the provision of veterinary services by non-veterinarians where appropriate, and to keep the boundaries up to date;
 - use of the powers in the animal welfare legislation might offer greater flexibility in respect of qualifications and help to detach DEFRA from detailed negotiations with training providers;
 - Ministers must nevertheless, as the law stands, ultimately decide which areas of practice should be reserved to veterinary surgeons, and it is difficult to see any politically realistic alternative to that. So long as Ministers have this responsibility they should devote reasonable resources to discharging it;
 - the Department has expressed a reluctance to contemplate putting right the deficiencies in the Act as it concerns veterinary surgeons unless new regulatory arrangements are put in place for other providers of veterinary services. DEFRA should therefore set work on the latter subject in hand now. Otherwise the changes in the Act which are plainly necessary will be delayed indefinitely.

E: UPDATING THE CHARTER

64. We have only had time to consider briefly the case for revising the 1967 Charter. It is out of date in a number of respects, and it contains a great deal of detail which these days would be left to bye-laws or internal rules and regulations. There is scope for revising it so as to give more explicit support for the current activities of RCVS, such as the regulation of veterinary nurses, which rests at the moment on the power to award diplomas and certificates. A new Charter could also be disentangled to some extent from the Act, so that new legislation would be less likely to create a need for consequential amendments to the Charter. We do not, however, see a way to pursue through changes to the Charter any of the priorities which we have identified. We **recommend** that the updating of the Charter should be considered further as a project in its own right.

G: NEXT ACTIONS

65. We do not see a straightforward way for the College to achieve even the modest changes that we have identified above as the most urgent priorities. We do not regard a Private Member's Bill as a way to bring about legislative change, as distinct from drawing attention to the need for action. A regulatory reform order could be used to reform the composition of Council and of the statutory committees, but DEFRA would need to take ownership of the changes and devote resources to consultation, the preparation of an order and the Parliamentary process.

66. It does not follow that the College ought to do nothing simply because the way ahead is uncertain. RCVS should urge Ministers to remedy the shortcomings in the legislation for which they are responsible, and in order to deliver that message effectively the College needs to be clear about the changes which are necessary. If, moreover, an opportunity to amend the Act arises it will be essential to have proposals ready for implementation. This means that all necessary consultations must have been completed and firm decisions taken in the light of the responses. The far-reaching proposals which Council adopted in 2005 had been the subject of thorough consultation, but they were not worked up in full detail. This was for good reason - a period of discussion and negotiation with DEFRA was envisaged - but the EFRA Committee nevertheless criticised RCVS for not having its ideas clearly defined.
67. We therefore **recommend** the following way forward:
- Council to consider our report and commission further advice as it thinks fit (particularly on options for the composition of Council);
 - RCVS to consult the veterinary and veterinary nursing professions, interested bodies and the public at large on the basis of Council's provisional views;
 - in parallel with the public consultations, RCVS to enter into discussions with DEFRA, BVA, BVNA and the universities;
 - Council to take stock of the outcome of the consultations and discussions and confirm or modify its proposals;
 - RCVS to translate the proposals approved by Council into a detailed specification of the changes to be made in the Act.
68. If Council agrees to proceed in this way, a question will arise over the status of the existing proposals adopted in November 2005. The changes envisaged then and the more modest measures which we recommend now had similar objectives. We see scope for confusion, however, if the 2005 proposals continue to represent RCVS policy at the same time as the College consults on less far-reaching amendments to the legislation. It will be difficult to give a straight answer to the question "What does the College want?", and in the world of practical politics it is vital to adopt a clear position which can be communicated in simple terms. We therefore **recommend** that Council formally withdraws the package which it adopted in 2005.

MEMBERSHIP OF THE GROUP AND MEMBERS' INTERESTS

Professor Stuart Reid (Chairman)	Veterinary surgeon, member of RCVS Council (university appointee), Dean of Faculty of Veterinary Medicine, Glasgow University
Mr Peter Coe	Formerly Chief Executive of the General Optical Council
Dr Jerry Davies	Practising veterinary surgeon, elected member of RCVS Council, Treasurer of RCVS
Mr Alex Galloway	Formerly Clerk of the Privy Council, consultant, currently advising RCVS on the updating of the Royal Charter
Mr Charles Gruchy	Practising veterinary surgeon, elected member of RCVS Council
Dr Barry Johnson	Practising veterinary surgeon, elected member of RCVS Council
Mrs Jacqui Molyneux	Practising veterinary surgeon, elected member of RCVS Council
Dr Bob Moore	Veterinary surgeon, elected member of RCVS Council, Senior Vice-President of RCVS, former practitioner, consultant
Mrs Jill Nute	Practising veterinary surgeon, elected member of RCVS Council, President of RCVS
Miss Hilary Orpet	Practising veterinary nurse, elected member of Veterinary Nurses Council
Ms Barbara Saunders	Member of RCVS Council (Privy Council appointee)
Professor Jim Scudamore	Veterinary surgeon, formerly Chief Veterinary Officer, formerly Member of RCVS Council (Privy Council appointee), holds appointment at Liverpool University, consultant
Professor Sandy Trees	Veterinary surgeon, member of RCVS Council (university appointee), Junior Vice-President of RCVS, holds appointment at Liverpool University

In attendance:

Mrs Nicky Paull, President of the British Veterinary Association (attending as observer from the Group's second meeting on 11 November 2008)

Miss Jane Hern, Registrar

Mr Jeff Gill, secretary

RECOMMENDATIONS OF THE REPORT OF THE ENVIRONMENT, FOOD AND RURAL AFFAIRS COMMITTEE ON THE VETERINARY SURGEONS ACT 1966, WITH GOVERNMENT RESPONSES

Recommendation 1

We were disappointed that, given the amount of time and the level of consultation which has already taken place on the profession's governance, the RCVS had not yet sorted out the detail involved in its reform proposals. We believe that a profession of its size and importance should by now have had drafted a new Bill as a way of firming up its proposals and to help to persuade Defra of its need for action towards new legislation in this area.

Government response: "The Committee's inquiry has demonstrated that there is much to be done before a Bill could be presented to Parliament. The Committee's inquiry into the Veterinary Surgeons Act (VSA) has been helpful in that it has taken the debate beyond first principles and highlighted the potential impact of any new regulatory burdens on small businesses.

When considering the Committee's recommendations, it is important to recognise that Defra envisages that any successor to the VSA would need to encompass providers of wider veterinary services. Whilst the RCVS will be a key partner in helping to design a framework for the regulation of veterinary service providers, there is a very diverse group of stakeholders to be consulted with a broad range of opinion on the best way forward. The RCVS may therefore wish to prioritise those areas where it can develop its ideas on behalf of the veterinary profession.

A new regulatory framework which includes veterinary service providers would impact on the role of the RCVS. The relationship between the RCVS and possible new regulatory bodies would need to be established."

Recommendation 2

Whilst there is general support for the greater inclusion of lay members on the Council of the RCVS, the Royal College must develop a clear plan for the structure of its proposed new Council under a new Act. The proportion of lay membership should be no less than 40% and professional members of the Council should be both appointed and elected. It is entirely appropriate that members of the profession should meet the costs of their own regulatory body through registration fees. The RCVS should analyse the additional costs likely from the creation of its new structures, in addition to the other changes it has proposed, and how these will affect the average veterinary practice and its customers.

Government response: "In our written evidence, we said that lay membership of Council should be significantly higher than it is now but that there should remain a veterinary professional majority. We agree that it would be helpful for RCVS to develop detailed proposals for a reconstituted Council for veterinary surgeons, based on these views and those of the Committee.

It is essential that any detailed proposals that are produced by the RCVS include a robust assessment of the costs and benefits. Defra may be able to provide some assistance on how an Impact Assessment might be developed."

Recommendation 3

The resources for work on a White Paper for the new primary legislation for the veterinary profession are unlikely to be available before 2011. Whilst this is a disappointment, the Royal College of Veterinary Surgeons should use this time now available to elaborate and clarify its proposals in greater detail, to consider further the case for those of its proposals which do not have general support within the profession, and to assess the potential cost of its proposals for regulating professional standards to the profession and to the consumer. We find it surprising that the RCVS Council was unaware of the decision taken by Defra to halt work on the new primary legislation. Defra appears to have raised the profession's expectations that a new Act would be introduced in the near future. Defra should ensure that in future its working relationship with the RCVS is improved.

Government response: "Defra's decision not to progress with the proposed White Paper was made at a very late stage, as the Lord Rooker considered his oral evidence to the Committee. The RCVS were informed immediately the decision was taken. We worked closely with the RCVS as we considered the Committee's detailed questions that it posed last year. We appreciate that the Department's subsequent decision not to proceed with a White Paper will have come as a disappointment and a surprise to the RCVS.

However, we believe that the Department continues to enjoy a good working relationship with the RCVS. Lord Rooker visited the RCVS on 6 May and discussed the VSA in some depth. Defra will continue to engage with the RCVS on a wide range of issues. Nigel Gibbens (Chief Veterinary Officer) will continue the regular and on-going dialogue enjoyed by previous CVO's and the RCVS Presidential team."

Recommendation 4

We agree wholeheartedly with the Department's assessment of the drawbacks of the present disciplinary system. It is not satisfactory for customers who have a genuine case for complaint about the professional standards of a vet to only have recourse to the civil law, without any appeal to a regulatory body.

Government response: "Defra agrees with this recommendation. However, when considering how we might replace the current disciplinary system, there are some fundamental questions to be addressed.

- What type of complaints should be investigated?
- Who considers the complaints, what proportion should be vets and how should they be appointed?
- What powers and sanctions might be applied?
- What system of appeal should be made available?
- How should the disciplinary process link to any new Council function of monitoring a veterinary surgeon's on-going fitness to practice?
- Should there be a veterinary ombudsman with oversight of the system?
- How much will the new system cost to administer and how will it be funded?

We recognise that the RCVS is uncomfortable with widening the scope of the current disciplinary system as this goes beyond the traditional scope of a regulator. But public expectations have changed dramatically and this change must be taken into account when developing a new complaints system.

There needs to be a period of reflection by the veterinary profession on these questions. Defra will contribute to the debate, however, as mentioned in our response to recommendation 6, we are not convinced that piecemeal change to the VSA is necessarily the best way forward. Not least, because we believe Council's responsibilities for monitoring veterinary surgeons fitness to practice would need to be clarified before designing a new disciplinary procedure."

Recommendation 5

We agree that there ought to be a wider range of sanctions available to the Royal College of Veterinary Surgeons in order to give greater flexibility and proportionality to the operation of the complaints procedure.

Government response: "We agree with this recommendation. It would be helpful if the RCVS and British Veterinary Association could jointly develop an initial approach to extending the range of sanctions. However, complaints are currently taken forward only when a veterinary surgeons conduct is considered to be disgraceful in a professional respect. As indicated in our response to the preceding recommendation, agreement needs to be reached on extending the basis on which complaints can be investigated. Once this is agreed, consideration can then be given to widening the range of sanctions."

Recommendation 6

There is a pressing need for the disciplinary process for veterinary surgeons to be updated. We agree that there ought to be a separation between the RCVS Council, which sets the rules for the profession, and the Disciplinary Committee, which adjudicates complaints on the basis of those rules. This should not wait until 2011. The RCVS should hold further discussions with Defra on whether changes to the process could be achieved through a more modest legislative proposal than would be required for the wholesale reform of its procedures. For example, a Private Member's Bill drafted with advice from Defra could be taken through by a Member of Parliament sympathetic to the RCVS proposals. Meanwhile, the RCVS should continue to improve its current procedures through administrative reforms which can be achieved within the current legislative framework.

Government response: "Defra is willing to consider any detailed proposal that might come forward from the veterinary profession and also to explore legislative options for updating the disciplinary process. However, availability of resource remains a constraining factor for Defra and detailed work would need to come from the veterinary profession.

There is general agreement on the separation of the standard setting and adjudication responsibilities of Council. However, any proposal to replace the current disciplinary arrangements for veterinary surgeons is likely to be the subject of keen debate with a key factor for some being whether the veterinary profession should retain responsibility for adjudicating complaints against its own members. Our view is that the profession should retain this responsibility but that safeguards should be included to ensure any new system has the confidence of the animal owning public.

Whilst we recognise the importance that the Committee place on this issue, our preference would be to develop a new disciplinary process that is part of a new regulatory framework for

veterinary services. We may ultimately need to decide between a less than perfect system built into the existing Act, or wait until resource is available to replace the existing Act and develop a more complete and robust disciplinary system."

Recommendation 7

The RCVS's case for a mandatory practice standards scheme does not appear to be proven or to have the support of the wider veterinary profession. The RCVS should for the present focus its energies on promoting its voluntary scheme to the profession to demonstrate the potential benefits to veterinary surgeons who do maintain high standards of a mandatory system.

Government response: "We agree with this recommendation. The main driver behind the RCVS proposal for a mandatory practice standards scheme has been to draw corporate practice within its sphere of influence. We do not believe that a satisfactory case has been put forward that demonstrates that the growth of corporate practice will lead to a conflict of interest for veterinary surgeons. Even if this risk exists, we would want to see other options developed that are less burdensome on business.

Throughout the debate on the need for a mandatory scheme, very little has been said about the standards actually delivered by veterinary practices. In any service sector, there is bound to be a wide range of quality of the services provided. We need an honest debate about the standards of service delivered to customers by veterinary practices, backed up with firm evidence. This debate would need to decide whether we need to impose minimum standards on small businesses or whether we can rely on a voluntary system of practice standards and market forces?"

Recommendation 8

We accept that continuing professional development is good practice, but the RCVS still has a long way to go to convince the profession of the need for mandatory continuing professional development and revalidation. We support some form of mandatory requirement in principle, but the College, together with other bodies in the veterinary profession, should consider carefully the potential impact of these proposals on smaller practices and prepare an analysis of the likely costs for consideration as part of the work towards a new Act.

Government response: "We agree with this recommendation. This is an area where the veterinary profession should concentrate its deliberations. Most practices will recognise that they need to invest in the professional skills and knowledge of their most important resource – their staff. The key question appears to be to what extent a regulator can pro-actively ensure that practicing veterinary surgeons keep up a minimum level of CPD. How do we ensure that any system of re-validation would be truly effective and not simply a paper exercise?"

Recommendation 9

There appears to be general agreement that the veterinary nurse profession has evolved to a stage where it warrants its own statutory framework of regulation. We recommend that the Royal College of Veterinary Surgeons and the Veterinary Nurses Council develop their proposals further to present a clear structure for future consideration. However, there is no clear view across the animal care professions on how other "para professionals" ought to be regulated, but the balance of opinion, which we support, is in favour of some form of regulation to protect animals and their owners against the depredations of the wholly unqualified practitioners of potentially harmful treatments. There is more work to be done by

Defra, the RCVS and the veterinary and animal health professions on Defra's proposal for a risk-based approach to a new veterinary services legislative framework.

Government response: "We agree that RCVS and Nurses Council should develop proposals for the regulation of veterinary nurses.

The regulation of para-professionals is a central issue when considering replacement of the Veterinary Surgeons Act. We would want to take into account the extent to which the current restrictions on veterinary practice inhibits the development of veterinary care services and ensure we put in place a risk based but more flexible regulatory framework.

A fundamental requirement for the regulation of para-professionals must be that they are suitably trained and that their competence is assured.

However, the scale of regulation for para-professionals has to be proportionate to risks involved and the size of the sector concerned. The extent to which para-professionals should work under veterinary direction or supervision or whether they may work independently and perhaps in competition with veterinary surgeons would also need to be clarified.

This is a complex area and the current pressure on Defra resource means we do not envisage being able to progress these issues in the current spending round period."

Recommendation 10

Defra's decision to walk away from work on a White Paper has left the revision of the Veterinary Surgeons Act 1966 in a mess. Whilst Defra's budgetary pressures may not enable it to complete all the functions that would currently be required to introducing a new Veterinary Surgeons Act, its decision to halt work completely on the new legislation is untenable. However, the Royal College of Veterinary Surgeons has not done enough itself to provide a clear picture of its proposals for a new statutory framework for the regulation of the profession. The Royal College must provide greater detail to the profession, and other interested parties, about its proposals for a new Council and disciplinary structure. In order to take its proposals further, the Royal College must also analyse the cost of its proposals to the profession and to the consumer. The main purpose of any new legislation must be to protect the consumer, but the veterinary profession must not be overloaded with unnecessary regulation.

Government response: "Defra regrets the delay that will be caused by its decision not to devote additional resource to enable a review of the Veterinary Surgeons Act to take place. However, the Department is faced with many pressing issues, our resources are finite and increasingly, we have to make difficult decisions about our priorities. We believe the decision we have taken regarding the Veterinary Surgeons Act, though regrettable, is correct."

Recommendation 11

It is unlikely that a complete overhaul of the regulatory structure will occur before 2011 unless the veterinary profession irons out its differences and decides what it wants. We believe that a working party comprising Defra, the Royal College of Veterinary Surgeons and the British Veterinary Association should share the costs of developing a new Bill by the end of 2008 with a view to its being introduced to the House in mid 2009. The profession must take the matter into its own hands and as a priority coalesce round some specific proposals to amend the disciplinary process for veterinary surgeons. This is generally agreed to be the area of the existing legislation most in need of updating.

Government response: "The development of a new Bill represents a significant project, and Defra cannot commit to a major review of these issues during the current spending round. If the RCVS and BVA wish to develop proposals jointly, the Department will do its best to provide advice and guidance where it can. However, we see little prospect of a draft Bill being prepared within the timescale envisaged by the Committee. It is debatable whether the development of a draft Bill, without the full involvement of Defra, is the best way of defining the professions proposals for reform."

REGULATION OF PROVIDERS OF VETERINARY SERVICES OTHER THAN VETERINARY SURGEONS AND VETERINARY NURSES

The candidates for regulation

1. The following main categories of people other than veterinary surgeons can lawfully, subject to various conditions and restrictions, do certain things which amount to the practice of veterinary surgery:
 - (b) veterinary students;
 - (c) student and listed veterinary nurses;
 - (d) persons carrying out procedures authorised under the Animals (Scientific Procedures) Act 1986;
 - (e) doctors and dentists, for certain purposes;
 - (f) owners of animals;
 - (g) owners of farm animals and persons engaged or employed in caring for farm animals;
 - (h) anyone castrating male animals, docking lambs' tails or amputating the dew claws of dogs;
 - (i) trained people carrying out specific procedures, namely blood and residue sampling, artificial insemination of mares and cattle, bovine ultrasound scanning, epidural anaesthesia for bovine embryo transfer, vaccination of poultry, vaccination against foot and mouth disease and TB testing; and
 - (j) anyone giving treatment by physiotherapy.
2. The list ought also to include equine dental technicians, but their activities, to the extent that they entail the practice of veterinary surgery, have not yet been legitimised. It is debatable whether bovine foot trimmers ought also to appear in the list: what they do may or may not amount to the practice of veterinary surgery.
3. Discussions of this subject are usually bedevilled by vagueness, encouraged by the use of the unhelpful term "paraprofessional" which has no clearly defined meaning in the veterinary context. Those who talk about the need to regulate "paraprofessionals" presumably have in mind those in categories (h) and (i) above, whose activities are authorised by exemption orders made by Ministers under powers in the Act. There is no particular issue over categories (a) to (d): proper statutory regulation is needed for veterinary nurses in due course, but that is generally accepted. Categories (e) to (g) consist of ordinary people who are allowed by Schedule 3 to the Act to practise amateur veterinary surgery within certain limits. Whether that is desirable is open to debate, but if the law were to be tightened this would probably be achieved by defining more narrowly the things that can be done rather than requiring the people concerned to be trained or subject to some form of regulation. The issue which concerns DEFRA appears

to be the regulation of those in categories (h) and (i) who routinely do things which require skill and care if animal welfare is not to be compromised.

4. The technicians in category (h) are trained to carry out very specific procedures. They need to understand enough of the wider background to appreciate the risks, but they are not expected to exercise any degree of clinical discretion. The required training is brief. By contrast, treatment by physiotherapy, category (i), calls for a thorough understanding of the anatomy and physiology of the species in question, and the practitioner must exercise clinical discretion in order to tailor the treatment to the patient's response. The relevant exemption order requires the treatment to be given under the direction of a veterinary surgeon who has examined the patient and prescribed the treatment by physiotherapy, but the person carrying out the treatment must inevitably use judgment and carry a substantial degree of responsibility. Chartered Physiotherapists who treat animals are qualified as human physiotherapists and will normally have completed a three or four year degree course before studying veterinary physiotherapy.
5. DEFRA's proposals for an exemption order to regulate equine dental technicians (EDTs) became mired in controversy, largely because of different views as to which model should be followed. The veterinary organisations tended to see EDTs as technicians carrying out a limited range of routine tasks, while some of the EDTs saw themselves as equine dentists. No exemption order has yet been made.

The issues: technicians

6. It is not obvious that there is a serious problem over the technicians in category (h). Their work is legitimised by exemption orders which specify what they can do and require them to have suitable training. Full professional regulation would probably be out of proportion to the risks. In practice, however, there have been two difficulties.
7. One is that in the past DEFRA have been slow to update exemption orders and make new ones when required. Making an exemption order, once the policy is established, is not a major undertaking. The orders are subject to the lightest of Parliamentary procedure, no debate being needed unless Parliamentarians raise objections. Deciding what the contents should be is, however, another matter. The Act gives Ministers the task of deciding to what extent certain non-veterinarians should be allowed to practise aspects of veterinary surgery, and it is not surprising if those who are consulted on proposed exemption orders (such as that for equine dental technicians) express opposing views.
8. The other problem concerns training requirements. Exemption orders normally specify that the technicians must have completed approved training. The trouble is that DEFRA cannot delegate the function of approving training to other bodies. That is because of the rule against subdelegation in subordinate legislation. When an Act of Parliament delegates to a Minister the task of making orders or regulations setting detailed rules for a particular matter, the Minister cannot pass part of the job on to someone else. The Veterinary Surgeons Act delegates to the Secretary of State the making of exemption orders specifying minor treatments, tests or operations which non-veterinarians may carry out, subject to compliance with any conditions specified in the orders. The rule against subdelegation means that the Secretary of State could not, for example, make an order to allow EDTs to carry out specified procedures on condition that they held qualifications awarded or approved by the British Equine Veterinary Association, because BEVA would then be doing part of the job which the Act had entrusted to the Minister. The task of specifying training requirements for technicians has in fact proved

troublesome even in uncontentious areas, because the Department cannot simply approve a number of training courses and then take no further interest. Approved courses need to be monitored to make sure they continue to come up to scratch, and new courses may be submitted for approval from time to time. DEFRA may reasonably take the view that this is not a proper job for central government.

The issues: physiotherapists

9. The first exemption order made under the Veterinary Surgeons Act 1948, the Veterinary Surgery (Exemptions) Order 1949, SI 1949/1410, allowed non-veterinarians to treat animals by physiotherapy. The terms of the exemption for physiotherapy were carried over unchanged into an exemption order of 1962. The veterinary surgeon is given an appropriate role, but there is one glaring omission: nothing is said about the person giving the treatment being qualified to do so. That is left entirely to the discretion of the directing veterinary surgeon. Since the exemption order refrains, perhaps wisely, from defining "physiotherapy", the order is generally taken to provide cover for the activities not only of physiotherapists but also of osteopaths, chiropractors of various flavours, and practitioners of some complementary therapies.
10. It would be easy to say that the exemption order ought to lay down that physiotherapy can only be given to animals by people qualified to do so, but there would be fierce controversy over which qualifications ought to be recognised.

A possible remedy

11. A partial solution to the problem of laying down appropriate training requirements might be found through the use of powers in the animal welfare legislation. The Animal Welfare Act 2006 and its Scottish counterpart give Ministers powers to issue codes of practice. The contents of a code of practice do not have the force of law, but they may be cited in proceedings for an animal welfare offence. Codes of practice can say that certain things should only be done by appropriately qualified people, and it may be possible for a code of practice to go further and refer to qualifications awarded or accredited from time to time by a named organisation. If the welfare codes were used to issue authoritative advice on training and qualifications, the exemption orders might say simply that anyone carrying out a particular procedure should have relevant training, without requiring the training to be approved by the Secretary of State. An approach on these lines would have to be concerted with the Scottish Government and the Welsh Assembly, which are responsible for issuing welfare codes in Scotland and Wales.
12. Whether such an approach would be legally acceptable would be a matter for Government legal advisors to consider. It would not take DEFRA or its Ministers out of the firing line altogether, because they would have to satisfy themselves from time to time that any body named in a welfare code as awarding or accrediting qualifications was doing its job properly. They would also still have to decide whether or not it was right to allow people other than veterinary surgeons to do certain things to animals. Making use of the welfare legislation in parallel with exemption orders could nevertheless offer a more flexible way of assuring the competence of non-veterinary technicians.